

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF KANSAS**

In re:)	
)	
GRIFFITH & GRIFFITH,)	Case No. 02-15096-12
)	
Debtor.)	
_____)	

MEMORANDUM AND ORDER

This matter is before the Court on the Motion of First State Bank, Norton, Kansas for an Order Dismissing this Chapter 12 proceeding (Doc. No. 12). Both parties have submitted briefs, and the Court held an evidentiary hearing July 15, 2003. After reviewing the facts, arguments and law, the Court is now ready to rule. The Court makes the following findings of fact and conclusions of law required by Federal Rule of Bankruptcy Procedure 7052, and disposes of all issues before the Court. The Court has jurisdiction by virtue of 28 U.S.C. §§ 1334 and 157.

I. NATURE OF THE CASE

The Debtor, Griffith & Griffith, a partnership, filed this Chapter 12 petition for relief seeking to reorganize its debt and continue its farming and ranching operation. The First State Bank, Norton, Kansas (“FSBank”) filed a motion to dismiss claiming that Griffith & Griffith is not eligible for Chapter 12 relief because the partnership can only exist for the purposes of winding up its business. In support of this position, FSBank claims that Griffith & Griffith ceased to exist as an ongoing partnership when one of the two partners, Michael Griffith, transferred all his ownership interest to the other partner, his brother Charles Griffith. According to FSBank, Charles at that point became the only remaining owner, and, according to Kansas law, the partnership was dissolved.

Griffith & Griffith contends that Carol Griffith, Charles' wife, was also a partner in the business at the time of the conveyance, and thus when Michael Griffith conveyed his 50% ownership interest, both Carol and Charles acquired that interest. Therefore, according to the Debtor, Griffith & Griffith was never dissolved, and the partnership is eligible to file a Chapter 12 case.

II. FINDINGS OF FACT

The Voluntary Petition filed October 10, 2002 indicates that the Debtor in this case is a Kansas partnership. *See* Docket No. 1. Griffith & Griffith has operated a farming and ranching business since the early 1980's. In 1998, Griffith & Griffith filed a federal tax return, using Federal Identification Number (EIN) 48-0970644. That return reflected that Charles Griffith and Michael Griffith were the sole and equal owners of the partnership.

On September 21, 1999, Michael Griffith assigned "his undivided 50% interest in and to Griffith & Griffith, a Kansas general partnership, including an undivided 50% interest in and to the profits, assets, debt, goodwill and businesses of said partnership" to Charles Griffith. Despite the fact that Michael Griffith assigned his entire interest in the partnership to Charles Griffith, Griffith & Griffith continued listing Michael as a partner in its 1999, 2000 and 2001 tax returns. None of those tax returns, however, indicated that Carol Griffith had any interest in the partnership.

The 1999 tax return, filed after Michael's assignment and at the end of the partnership's 1999 tax year, stated that Charles Griffith owned 100% of the partnership capital. This is entirely consistent with the assignment. In addition, the block for "Final return" was checked on the 1999 tax return, meaning no further partnership returns for this entity would be filed. That is also consistent with the fact Charles Griffith had acquired a 100% ownership interest at that point.

On February 8, 2000, Charles and Carol Griffith filed a Statement of Financial Affairs in Case No. 00-10209, an individual Chapter 11 bankruptcy filed by them in Wichita, Kansas. In that Statement of Financial Affairs, Charles and Carol identified Michael Griffith as one 50% owner of the partnership and Charles Griffith as the other 50% owner of the partnership. Significantly, Carol Griffith was not identified as a partner. Charles Griffith and Carol Griffith signed that Statement of Financial Affairs under penalty of perjury.

The Debtor filed its 2002 tax return on February 19, 2003. The 2002 tax return, using the same EIN as Griffith & Griffith had used in the 1998-2001 returns, including the “Final return” in 1998, indicated that Carol Griffith owned a 50% interest in the Griffith & Griffith partnership, with Charles owning the remaining 50%. This tax return, which is the first evidence that Charles and Carol Griffith treated Carol Griffith as having any ownership interest in the partnership, was filed approximately one month after FSBank filed the Motion to Dismiss in this case, which Motion raised the eligibility issue that is the subject of this opinion.

III. CONCLUSIONS OF LAW

The Debtor in this case claims to be an ongoing partnership using the name of Griffith & Griffith and using the same EIN Charles and Michael used when they were the sole partners. FSBank contends the Griffith & Griffith partnership that is the Debtor in this case dissolved when one of the two partners, Michael H. Griffith, assigned his undivided 50% interest in the partnership to Charles W. Griffith. According to FSBank, this dissolution means that Charles Griffith can only carry on the partnership business for the sole purpose of winding up the partnership, which is clearly contrary to the purpose of a Chapter 12 reorganization.

A. Griffith & Griffith was dissolved as a partnership when Michael Griffith transferred his ownership interest to Charles Griffith.

Pursuant to Kansas law, a partnership is defined as “an association of two or more persons to carry on as co-owners a business for profit formed under K.S.A. 2002 Supp. 56a-202, predecessor law, or comparable law of another jurisdiction.” K.S.A. 2002 Supp. 56a-101(f).¹ Therefore, Griffith & Griffith can only exist as a partnership if it had two or more persons carrying on as co-owners. FSBank contends Charles and Michael Griffith were the only two owners of the partnership and, upon the transfer of Michael’s interest to Charles, the partnership ceased to exist, with the exception of winding up its business. The Debtor responds that Carol Griffith was also an owner in the partnership, and that Carol and Charles continued to operate Griffith & Griffith following Michael’s transfer of interest in 1999.

The evidence in this case overwhelmingly demonstrates that Charles Griffith and Michael Griffith were the only two partners in Griffith & Griffith. The Debtor’s 1998, 1999, 2000 and 2001 tax returns all show only Michael and Charles Griffith as owners of the business, although the 1999 return states that Charles owned 100% of the capital at the end of that tax year. The 2000 and 2001 returns do not indicate what portion of the capital was owned by Charles or Michael. Carol is not shown as a partner, before or after Michael’s departure in 1999, in the 1998-2001 returns. Similarly, the Statement of Financial Affairs filed by Charles and Carol Griffith in Case No. 00-10209-11 indicates that only Michael and Charles held an ownership interest in the partnership business.

¹Griffith & Griffith was formed prior to the enactment of the Revised Uniform Partnership Act in Kansas. However, after July 1, 1999, the revised act, codified at K.S.A. 2002 Supp. 56a-101 through 56a-1305, is applicable to all partnerships. *See* K.S.A. 2002 Supp. 56a-1305(b).

On September 21, 1999,² Michael H. Griffith transferred “his undivided 50% interest in and to Griffith & Griffith, a Kansas general partnership, including an undivided 50% interest in and to the profits, assets, debt, goodwill and businesses of said partnership” to Charles W. Griffith. As of that date, Charles Griffith became the sole owner of Griffith & Griffith. Pursuant to Kansas law, the Griffith & Griffith partnership was dissolved at that point. K.S.A. 2002 Supp. 56a-801(a). This result is recognized by the partnership’s 1999 tax return, which was filed as a “Final return.” Thus, the dissolved partnership could only exist for the purposes of winding up its business pursuant to K.S.A. 2002 Supp. 56a-803(c).

The Debtor claims that FSBank’s actions and course of conduct in dealing with the Griffith & Griffith partnership, including the fact that some documents created by FSBank listed Carol Griffith as a general partner, are evidence that Carol Griffith was a partner in the business and should bar FSBank from contending that Michael and Charles Griffith were the only two partners. The Court agrees that FSBank’s long-term treatment of Griffith & Griffith, and Charles and Carol Griffith, is inconsistent with the position it takes in this motion. FSBank’s actions and treatment of Charles Griffith, Carol Griffith and Griffith & Griffith tend to show that FSBank considered Carol Griffith a partner in Griffith & Griffith.

If the only parties involved in this case were FSBank and the partnership, the Court might well have adopted the Debtor’s position and found that FSBank is estopped from raising the arguments made in

²The Assignment indicates that the transfer was made on September 21, 1999. However, the signatures of Michael Griffith and his wife Jane Griffith were acknowledged by a Notary Public on October 4, 1999, and the signatures of Charles Griffith and his wife Carol Griffith were acknowledged on October 6, 1999. Because the exact timing of the transfer is not critical to the Court’s analysis, it will consider the transfer to have been effective September 21, 1999.

this case. However, the Debtor's entitlement to proceed under Chapter 12 of Bankruptcy Code is statutory, not something that can be bestowed upon the Debtor by the actions of one creditor.

The Court cannot allow Griffith & Griffith to remain in a Chapter 12 case where it is clearly ineligible to proceed as a debtor, even if the creditor who filed the Motion to Dismiss has acted inconsistently toward the Debtor. The fact remains that although FSBank may have treated Carol Griffith as a general partner of Griffith & Griffith, Griffith & Griffith did not.³ Once Michael Griffith transferred his 50% ownership interest in the partnership to Charles Griffith, Griffith & Griffith became a partnership with one owner, which is clearly not allowed under Kansas partnership law. Therefore, the partnership could only continue for the purposes of winding up its business before ultimately terminating. *See* K.S.A. 2002 Supp. 56a-802.

B. Under Kansas law, the partnership was dissolved and had to be wound up even if Carol Griffith had an ownership interest in the partnership.

Although not addressed by FSBank, there is another basis for finding that Griffith & Griffith must be dissolved and its business wound up. Pursuant to Kansas law, a partnership at will must be dissolved and the partnership business wound up upon notice from any partner of that partner's express will to withdraw as a partner, or on a later date specified by the partner.⁴ K.S.A. 2002 Supp. 56a-801(a). By

³As previously noted, Griffith & Griffith did, for the first time on its 2002 federal tax return, show Carol Griffith as a 50% owner of the partnership. This tax return filing, however, came immediately after FSBank's instant motion, arguing the partnership was not viable with Charles as the only partner. Carol and Charles Griffith may now be equal partners in some partnership, but the Griffith & Griffith partnership that is the Debtor in this case legally dissolved September 21, 1999, the date Charles Griffith became the owner of a 100% interest in the partnership.

⁴A "partnership at will" means a partnership where the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking. K.S.A. 2002 Supp. 56a-101(h). The Court was presented with no evidence that would indicate that the

transferring his complete ownership interest in Griffith & Griffith to Charles Griffith, Michael Griffith notified the partnership that he wished to withdraw as a partner. Therefore, K.S.A. 2002 Supp. 56a-801(a) requires that the partnership be dissolved and its business wound up, even if Carol were a partner along with Charles and Michael at the time of Michael's withdrawal.

C. Winding up of the partnership business is clearly inconsistent with filing a case under Chapter 12 of the Bankruptcy Code.

Pursuant to Kansas law,

A person winding up a partnership's business may preserve the partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, settle and transfer the partnership's property, discharge the partnership's liabilities, distribute the assets of the partnership pursuant to K.S.A. 2002 Supp. 56a-807, settle disputes by mediation or arbitration, and perform other necessary acts.

K.S.A. 2002 Supp. 56a-803(c). It is clear from this statute that upon the dissolution of Griffith & Griffith, Charles Griffith became authorized only to preserve the partnership business and property as a going concern "for a reasonable time."

The purpose of a Chapter 12 bankruptcy proceeding is to reorganize the debt of a family farmer and, hopefully, provide a method for the farming operation to emerge from bankruptcy as an ongoing business. See *In re Lockard*, 234 B.R. 484, 490 (Bankr. W.D. Mo. 1999) (stating "Chapter 12 was intended to enable family farmers to retain their farms while reorganizing their financial affairs") and *United States Department of Agriculture v. Fisher (In re Fisher)*, 930 F.2d 1361, 1362 (8th Cir. 1991) (stating "Chapter 12 was created to give farm families facing bankruptcy a fighting chance to reorganize their debts

Griffith & Griffith partnership was anything other than a partnership at will.

and keep their land.”). Attempting to reorganize the partnership debt in an effort to continue the business affairs of the partnership is directly contrary to the purpose of winding up a dissolved partnership’s business.

It has now been almost four years since Michael Griffith withdrew as a partner, and the partnership dissolved under Kansas law. Debtor filed its Chapter 12 Plan for Reorganization (Doc. No. 58) in May 2003. That plan contemplates reorganizing, including paying creditors over twenty (20) years, with the retention of most assets after completion of the plan payments. This plan, and frankly this entire filing, is inconsistent with the reasonable winding up of a dissolved partnership, which is all that Charles Griffith is presently entitled to do with this partnership.

D. Other arguments raised by FSBank

FSBank raises two additional arguments in its Motion to Dismiss which, although not dispositive, the Court will address. First, FSBank contends that Charles and Carol Griffith are ineligible to file as Chapter 12 debtors, as a husband and wife, because they do not meet the definition of “family farmer” found in 11 U.S.C. § 101(19). Because this case was filed by the Griffith & Griffith partnership, not Charles and Carol Griffith, individually, FSBank's argument is irrelevant in this case. If, in the future, Charles and Carol Griffith file a Chapter 12 bankruptcy case as husband and wife, rather than as a partnership, FSBank will have the opportunity to challenge the Griffiths' eligibility. However, the Court will not now issue what would essentially be an advisory opinion concerning this issue.

The second issue raised by FSBank is that the Debtor, Griffith & Griffith, cannot show a sufficiently stable and regular income to meet the requirements to file a Chapter 12 case. FSBank contends that because the Debtor did not operate in the year prior to filing this case, the Debtor can not show that it has

the stable and regular income required by 11 U.S.C. § 101(19). Determining whether the Debtor has sufficiently stable and regular income to qualify as a debtor under Chapter 12 is a fact intensive task, and the Court has not been provided with the necessary evidence to make that determination. Therefore, the Court makes no finding on this issue raised by FSBank.

IV. CONCLUSION

The Debtor was a partnership formed between Michael Griffith and Charles Griffith. The overwhelming evidence clearly shows that these two brothers were the sole owners of the partnership prior to Michael's assignment in September 1999. The Debtor's position that Carol Griffith also owned a portion of the partnership at the time Michael withdrew from Griffith & Griffith is not supported by competent evidence. When Michael assigned his ownership interest to Charles, the partnership was dissolved under Kansas law and could only continue to operate for the purposes of winding up the partnership's business. Because participation in a reorganization plan under Chapter 12, almost four years after the partnership's dissolution, is inconsistent with winding up the partnership's business, the Court finds this case must be, and hereby is, dismissed.

The Court can not adopt the Debtor's argument that FSBank should be estopped from challenging the ongoing nature of the partnership. The Court agrees that FSBank has continually acted in a manner that is inconsistent with the position it is taking in this motion. However, the actions of one creditor cannot operate to turn an otherwise ineligible Chapter 12 debtor into an eligible one.

IT IS, THEREFORE, BY THIS COURT ORDERED that the Motion of First State Bank, Norton, Kansas for an Order Dismissing this Proceeding (Doc. 12) is hereby granted. This case is

dismissed in its entirety, including the pending Motion to Determine Secured Status (Doc. No. 35), which is made moot by this Order.

IT IS SO ORDERED this 29th day of August, 2003.

JANICE MILLER KARLIN, Bankruptcy Judge
United States Bankruptcy Court
District of Kansas

CERTIFICATE OF SERVICE

The undersigned certifies that copies of the attached Memorandum and Order was deposited in the United States mail, postage prepaid on this 29th day of August, 2003, to the following:

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